In the District Court of the United States for the Southern District of Ohio, Eastern Division

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IN EQUITY NO. 1039

STATE OF OHIO AND PUBLIC UTILITIES COMMISSION of Ohio

v.

UNITED STATES OF AMERICA AND INTERSTATE Commerce Commission

IN EQUITY NO. 1040

THE WHEELING AND LAKE ERIE RAILWAY COMPANY, a corporation

v.

UNITED STATES OF AMERICA AND INTERSTATE Commerce Commission

JURISDICTIONAL STATEMENT

Pursuant to Rule 12, paragraph 1 of the Rules of Practice applicants for allowance of appeals to this honorable Court from the final decrees and accompanying stay orders of the District Court of the United States for the Southern District of Ohio, Eastern Division, entered in each of the above

entitled causes on the ninteenth (19th) day of January 1934 state as follows:

1. Above causes and each of them was instituted in the United States District Court for the Southern District of Ohio, Eastern Division, under authority of an Act of Congress approved October 22, 1913, ch. 32, 38 Stat. 220, U.S. Code 28, Sec. 47 to enjoin and set aside a certain order of the Interstate Commerce Commission bearing date the 2d day of May 1933 in a case then pending before it known as I.C.C. Docket 25666, Interstate Rates on Bituminous Coal within the State of Ohio. In each case interlocutory injunction was prayed and the cases came on for hearing before a specially constituted District Court consisting of a Circuit and two District Judges of the United States. After argument, the parties in open court stipulating so to do, the cases were submitted as on final argument for final decree. Thereafter, the effective date of the Commission's order complained of being imminent (viz, July 10, 1933), said District Court on the 7th day of July 1933 restrained and suspended said Commission's order of May 2, 1933, until the further order of said District Court, which said further order, entered January 19, 1934, found and determined that said temporary injunction should be "vacated and set aside" and that the Petition to Enjoin said order of the Interstate Commerce Commission of May 2, 1933, in each of the above causes "should be dismissed for want of Equity, at costs

of petitioners", but added thereto "that the operation and enforcement of the order (of May 2, 1933), of the Interstate Commerce Commission "be stayed for a period not to exceed sixty days from the date hereof (viz, January 19, 1933), for the purpose of perfecting an appeal to the Supreme Court of the United States"; from and after expiration of said sixty days all intervening carriers to keep accurate accounts in detail, pending final determination of the causes in this honorable Court, and in event said order of May 2, 1933, be set aside or annulled then to refund all increases thereunder collected.

This appeal is from and intended to effect review of only so much of said final decree and attendant order as purports to further stay the effective date of the order of the Interstate Commerce Commission of May 2d, 1933 "for a period not to exceed sixty days from January 19, 1934, for the purpose of perfecting an appeal to the Supreme Court of the United States."

1. The Act of October 22, 1931, ch. 32, 38 Stat. 219; U.S. Code Title 28 Sec. 46, 47, in conjunction with Act of February 13, 1925, 43 Stat. 936; U.S. Code Title 28, Sec. 44, 45a, 46, 47, 47a, and 48 provide for and authorize direct review by and on appeal to the Supreme Court of the United States from both interlocutory and final decrees of United States District Courts in cases such as here at bar.

2. The final decree of the United States District Court for the Southern District of Ohio, Eastern Division, bear date of January 19, 1934.

3. Appellants cite *Virginian Railway Company* v. *United States,* et al., 272 U.S. 658, 672, et seq., in support of their claim of jurisdiction, and on the merits.

(Signed) ELMER B. COLLINS,
For United States of America.
(Signed) J. STANLEY PAYNE,
For Interstate Commerce Commission.
(Signed) GUERNSEY ORCUTT.
(Signed) F. D. MCKENNEY.

U.S. GOVERNMENT PRINTING OFFICE: 1934